



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10<sup>th</sup> MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 919/2021 & CM APPLs. 2490/2021, 49144/2023**

OKHLA INDUSTRIAL AREA TEMPO TRANSPORT UNION  
(REGD.) THROUGH ITS GEN. SECRETARY ..... Petitioner

Through: Mr. Roopansh Purohit, Mr. R.K. Shokeen and Mr. Harsh Panwar, Advocates.

versus

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD & ANR. .... Respondents

Through: Mr. R.K. Dhawan, Standing Counsel with Mr. V.K. Teng, Ms. Nisha Dhawan, Ms. Shivani Taneja and Ms. Anmesha Singh, Advocates for DSIIDC.  
Mr. Tushar Sannu, Standing Counsel with Mr. Sahaj Karan Singh and Mr. Drona Negi, Advocates for MCD.  
Ms. Amita Kumari, Advocate for R-3.

**CORAM:**  
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner/Okhla Industrial Area Tempo Transport Union has approached this Court challenging the Notice dated 31.12.2020 issued by Respondent No.1/DSIIDC directing the Petitioner to vacate the premises being behind Shed No.1, Okhla Industrial Estate, Phase III, Okhla, New Delhi.
2. It is the case of the Petitioner that the Petitioner is a registered union



of transport workers. The Petitioner was allotted a plot measuring 80 x 80 sq. ft. behind Shed No. 1, Okhla Industrial estate, Phase III, Okhla, New Delhi at a monthly ground rent of Rs.135/- for parking the vehicles belonging to Union members on 30.06.1983 by the predecessor of the Respondent No.1 i.e., Commissioner of Industries. On 05.01.1999, a fresh permission was granted to the Petitioner for two years w.e.f 01.08.1998 till 31.07.2000. It is stated that on 18.03.2004, M/s J.K.V.B Properties Pvt. Ltd/ Respondent No.3 became the owner of Shed No. 1, Okhla Industrial Estate and started carrying out unauthorized construction behind the shed i.e. the space allotted to the petitioner. The Petitioner instituted a Suit bearing No.1086/2014 (Old No.274/2005) before the Court of Senior Civil Judge, Delhi for removal of the unauthorized construction carried out by M/s J.K.V.B Properties Pvt. Ltd. The Commissioner of Industries, the predecessor of Respondent No.1, filed a written statement admitting that the premises in question had been allotted to the Petitioner in the year 1983. The Commissioner of Industries also stated in the written statement that the Petitioner was allotted an alternate site in place of space allotted therein, but the Petitioner has not taken possession of the same and till date, the Petitioner has illegally occupied the old site despite repeated reminders.

3. Material on record discloses that M/s J.K.V.B Properties Pvt. Ltd also filed a suit being No.13/17 (Old No.CS (OS) 2384/2006) before this Court seeking permanent and mandatory injunction against the Petitioner and the Commissioner of Industries from carrying out any constructions of parking spot and for removal of encroachments. Pending the said suit, a Notice dated 20.01.2010 was issued by the Respondent No.1 to the Petitioner stating that the Petitioner is in unauthorized occupation of the premises in question and



the Petitioner was directed to remove the encroachments. The Petitioner, thereafter, filed a writ petition being W.P.(C) 631/2010 before this Court seeking quashing of the Notice dated 20.01.2010. The said writ petition was disposed of by this Court *vide* Order dated 01.02.2010 which reads as under:

**"WP (CIVIL) NO. 631/2010 & CM APPL NO. 1329/2010**

*1. Notice Ms. Renuka Arora, Learned Counsel accepts notice on behalf of the respondents. She states that the impugned order came to be issued pursuant to the oral issued by the Court in the course of hearing in CS (OS) No. 2384 of 2006 on 13th January 2010.*

*2. A copy of the said order passed by the Court on that date does not reflect any such direction and therefore, this Court is not in a position to entertain the present petition. Nevertheless it is open to the Petitioner to apply to the said Court for appropriate directions on the basis of the impugned order issued by the Respondents.*

*3. The Writ Petition and the pending application are disposed of. Order be given dasti."*

4. The aforesaid Order was challenged by the Petitioner by filing an appeal being LPA No.114/2010. In the appeal, the Respondents were directed not to demolish the structures of the Petitioner. However, the appeal was disposed of by this Court on 09.04.2010 by passing the following Order:

*"Learned counsel for the Respondents say that they will issue a show cause notice to the Appellant for his removal from the area in dispute. It is further stated that until the show cause notice is adjudicated, action in terms of the notice dated 20th January, 2010 will not be taken.*



*In view of this, nothing further survives in this appeal. It is accordingly disposed of."*

5. Pursuant to the aforesaid Order passed by this Court in the appeal, a show cause notice dated 01.06.2010 was issued to the Petitioner. However, material on record does disclose that the same was not replied to and another show-cause notice was issued on 16.06.2010, fate of which is still unknown to the court.
6. It is pertinent to mention here that during the pendency of the suits filed by the Petitioner and the M/s J.K.V.B Properties Pvt. Ltd and the show cause notice dated 01.06.2010, the Impugned Notice dated 31.12.2020 has been issued to the Petitioner by the Respondent No.1. The Petitioner replied to the show cause notice dated 31.12.2020 mentioning the fact that rent was being paid by the Petitioner for occupying the premises in question.
7. Stating that the Impugned Notice dated 31.12.2020 is in violation of Delhi Industrial Development, Operation and Maintenance Act, 2010 and the protections afforded under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the Petitioner approached this Court by filing the instant writ petition. It has been noted by this Court on 05.02.2021 that the Petitioner has already been dispossessed on 03.01.2021.
8. The short question which arises for consideration before this Court as to whether the Petitioner has been wrongly evicted from the premises in question without following the due process of law or not.
9. At present, this Court is not going into the question regarding the right of the M/s J.K.V.B Properties Pvt. Ltd over the premises in question since these are matters of regularly instituted suits and other proceedings between



the parties.

10. Undisputedly, the Petitioner was given possession of the premises in question on 30.06.1983 by the predecessor of the Respondent No.1 i.e., Commissioner of Industries. The Petitioner, therefore, was in lawful possession of the premises in question. Though the Impugned Notice states that further extension to the Petitioner has not been granted but, it does not give the license to the Respondent No.1 to evict the Petitioner without following the due process of law.

11. At this juncture, it is necessary to reproduce the relevant provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The relevant portion of Sections 2(e), 2(g), 4 and 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, read as under:

***"2(e) "public premises" means—***

*(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980) under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;*

*(2) any premises belonging to, or taken on lease by, or on behalf of,—*

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*(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such*



*occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.*

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***4. Issue of notice to show cause against order of eviction.—***

*[(1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.*

*(1A) If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.*

*(1B) Any delay in issuing a notice referred to in sub-sections (1) and (1A) shall not vitiate the proceedings under this Act.]*

*(2) The notice shall—*

*(a) specify the grounds on which the order of eviction is proposed to be made; and*



*[(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—*

*(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not [later than] seven days from the date of issue thereof, and*

*(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]*

*(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.*

#### **5. Eviction of unauthorised occupants.—**

*[(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises:*



*Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1A), as the case may be, of section 4.]*

*(2) If any person refuses or fails to comply with the order of eviction 6 [on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,] the estate officer or any other officer duly authorised by the estate officer in this behalf 7 [may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.*

*[Provided that if the estate officer is satisfied, for reasons to be recorded in writing, that there exists any compelling reason which prevents the person from vacating the premises within fifteen days, the estate officer may grant another fifteen days from the date of expiry of the order under sub-section (1) to the person to vacate the premises.]”*

12. A perusal of the facts of the present case reveal that the Petitioner was permitted entry into the premises in question by the predecessor of the Respondent No.1 i.e., Commissioner of Industries. It is the case of the Respondent No.1 that the Respondent No.1 has not granted further extension to the Petitioner which is disputed by the Petitioner, and therefore, the Petitioner can at best be called as unauthorized occupant. The case as to whether the Petitioner has become an unauthorized occupant or not would have to be decided after leading evidence before the Court of competent



jurisdiction. Since the Petitioner is not an unauthorized occupant, action, if any, could only be taken against the Petitioner under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Without taking recourse to Section 4 of the Act, action of the Respondent No.1 in evicting the Petitioner cannot be permitted. The Petitioner could not have been dispossessed from the premises in question without following the procedure as laid down under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

13. In view of the above, the writ petition is allowed. The Impugned Notice dated 31.12.2020 is set aside. The Respondents are directed to restore the possession of the Petitioner within two weeks from the date of this Judgment and proceed further in accordance with the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction of the Petitioner.

14. Pending applications, if any, also stand disposed of.

15. It is made clear that this Court has not made any observations on the merits of the case.

**SUBRAMONIUM PRASAD, J**

**MAY 10, 2024**

*S. Zakir*